

EXHIBIT 58

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3

4 NIKKI BOLLINGER GRAE, Individually

5 and on Behalf of All Others

6 Similarly Situated,

7 Plaintiff, Civil Action No.

8 vs. 3:16-cv-02267
9

10 CORRECTIONS CORPORATION OF

11 AMERICA, ET AL.,

12 Defendants.
13

14 CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

15 VIDEOTAPED DEPOSITION OF DONNA MELLENDICK

16 Conducted virtually via remote videoconference

17 October 27, 2020
18

19 Reported by:

20 Misty Klapper, RMR, CRR

21 Job No.: 10073773
22

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9 CORRECTIONS CORPORATION OF

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17 Videotaped deposition of DONNA MELLENDICK, taken on
18 behalf of Defendants, via Zoom remote videoconference,
19 beginning at 10:10 a.m. CST on Tuesday, October 27, 2020,
20 before Misty Klapper, RMR, CRR.
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25

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ALSO PRESENT: DeSHAWN WHITE, VIDEO OPERATOR
D. SCOTT DODRILL

1 The court reporter may now swear in
2 or affirm the deponent.

3 MS. REPORTER: One moment.

4

5 Whereupon:

6 DONNA MELLENDICK,
7 was called for examination, and, after being duly
8 sworn, was examined and testified as follows:

9 MS. REPORTER: Thank you.

10 You may proceed.

11 EXAMINATION BY COUNSEL FOR DEFENDANTS

12 BY MS. TOMKOWIAK:

13 Q. Good morning, Ms. Mellendick.

14 A. Good morning.

15 Q. We -- we spoke before we went on the

16 record, but I don't think I introduced myself.

17 So my name is Sarah Tomkowiak and I represent the

18 defendants in this matter.

19 Have you been deposed before?

20 A. I have not.

21 Q. Okay. Well, this deposition is being
22 taken over Zoom, so it's even more important
23 than -- and when we're in person usually to try
24 not to talk over each other.

25 Your counsel might also object to my

1 Q. And that's referring to your
2 experience during the time you were at the BOP
3 30-plus years through August 2015, correct?

4 A. You -- but you were talking about
5 what I put in my report?

6 Q. Well, I'm talking about the
7 experience that you drew upon in forming your
8 opinions as they relate to the 2012-2016 time
9 period. The experience that you're drawing upon
10 is your experience at -- during the time that you
11 were at the BOP; is that right?

12 A. That is right.

13 Q. Okay. I just have a couple other
14 questions on this LinkedIn profile and then we
15 can put it away.

16 I see under Interests that you follow
17 the GEO Group and MTC and CoreCivic.

18 Why do you do that?

19 MR. FORGE: I'm going to object as
20 vague as to time.

21 THE WITNESS: It's been a while.
22 Probably just kind of -- just to see
23 what's -- what they're up to, I guess.

24 It was my -- was my career for quite
25 a while, so --

1 BY MS. TOMKOWIAK:

2 Q. All right. And I see that you also
3 follow the ACA, the American Correctional
4 Association.

5 What's that?

6 A. American Correctional Association?

7 Q. Um-hmm (affirmative).

8 A. It's -- how do I describe it?

9 Mr. Dodrill talks about it in his
10 report, but it's a organization that is comprised
11 of correctional professionals that go out and
12 audit correctional facilities and provide a
13 certification that they're meeting all the
14 standards that the ACA has developed.

15 Q. Why do you or did you at one point
16 follow them?

17 A. I -- throughout my career I've dealt
18 with ACA in my position in the program review
19 division, worked closely with ACA accreditations,
20 et cetera. And -- and I know some -- or did know
21 some folks that are, you know, associated with
22 them, so --

23 Q. Okay. And all BOP-operated
24 facilities are required to maintain ACA
25 accreditation; is that right?

1 A. That is correct.

2 Q. And same thing is true for all
3 privately operated facilities?

4 A. Correct.

5 Q. Okay. We are done with that exhibit,
6 so you can close that out if you want.

7 During the time that you worked as
8 PMB administrator, the BOP was under contract
9 with CCA for the housing of federal inmates in
10 five correctional facilities; is that right?

11 A. That is right.

12 Q. And those are the facilities that you
13 discuss in your report. They're Adams, Cibola,
14 Eden, McRae and Northeast Ohio?

15 A. Yes.

16 Q. In your role as PMB administrator,
17 you interacted with CCA and its employees, right?

18 A. I did.

19 Q. How frequently would you say those
20 interactions were?

21 A. Mainly my staff were the ones that
22 interacted with CCA employees on a regular basis,
23 whether it be daily, weekly. I would say my
24 interactions were probably maybe -- maybe
25 monthly. I kind of think it depended on what was

1 going on at the time.

2 Q. And what were the nature of those
3 interactions with CCA?

4 A. My staff's or mine?

5 Q. Yours.

6 A. Typically it would be working
7 together to schedule partnering meetings and if
8 there were -- we had a -- let's step back a
9 minute.

10 So the Bureau of Prisons partnered
11 with our private providers. We wanted to work
12 together. We wanted our private partners to be
13 successful in providing these inmates with
14 confinement beds. And the partnering process
15 involved staff at all levels in -- in my branch,
16 in the PCC section, in the CFM section to be able
17 to interact with one another.

18 So usually I didn't interact with
19 anyone at CCA unless it was something that
20 couldn't be resolved at a lower level or it was
21 just a higher level, whether we were looking to
22 try to organize our next partnering meeting, you
23 know, the logistics and -- and the agenda,
24 et cetera.

25 Q. Okay. And when it did rise to the

1 A. The same. I highly respected him.

2 Q. Now, you said that your staff also
3 had interactions with CCA; is that right?

4 A. Yes.

5 Q. And what was -- if you -- to the
6 extent of your knowledge, what were the nature of
7 those interactions?

8 A. Well, in my branch I had -- I had
9 staff in my branch that worked on-site at each of
10 the private contract facilities. So I typically
11 had at least two staff in my branch. And they
12 interacted with the provider. Whether it be CCA
13 or another company, they interacted with those
14 staff daily. So --

15 Q. You're referring to the -- make sure
16 I get my acronyms right, but SSIM and SOM; is
17 that right?

18 A. That is correct.

19 Q. Okay. And those were the -- the
20 on-site monitors that the BOP had in place at the
21 privately operated facilities?

22 A. Yes.

23 Q. Did the -- do you know, did the BOP
24 have any similar type of on-site monitoring at
25 its own facilities?

1 A. The only instance I could recall that
2 is if -- I think the BOP had at least a couple
3 facilities in which they might have contracted
4 services. So they may have had someone
5 responsible for monitoring the contract.

6 Q. Okay. But as a general matter,
7 the -- the BOP facilities did not have the same
8 type of 24/7 on-site monitors as the privately
9 operated facilities did?

10 A. They did not. And it -- and it
11 wasn't 24/7. I mean, my staff worked a -- an
12 eight-hour day. So it wasn't 24/7, yeah.

13 Q. 8/7?

14 A. Yeah.

15 Q. Got it.

16 And -- and we -- we talked a little
17 bit about the auditing process earlier. And
18 privately operated facilities were audited on an
19 annual basis; is that right?

20 A. Initially when we first started back
21 in early 2000s, it was -- CFM did a -- an audit
22 every six months. And that eventually changed to
23 an annual audit.

24 Q. And is it fair to say that with
25 respect to BOP-operated facilities, they're not

1 always audited on an annual basis, depending upon
2 the rankings that they receive?

3 A. Are you referring to program reviews
4 that were conducted of a discipline in a BOP
5 facility?

6 Q. Yes.

7 A. Yes. So they -- it would -- it was
8 cyclic. It would depend on -- on their last
9 rating, whether the next program review would be
10 a year out, two years out or three years.

11 Q. And turning -- turning back to CCA in
12 your role as PMB administrator, is it accurate to
13 say that you oversaw the issuances of notices of
14 concern, for example, to CCA?

15 A. They were brought to my attention.

16 Q. And what does that mean?

17 A. I was -- I was, like, in the loop.
18 You know, my staff would inform me of what was
19 going on. I didn't approve all of them, but I
20 was aware of them.

21 Q. What about with respect to
22 deductions? What was your role in determining
23 whether a deduction was warranted or not?

24 A. My staff, again, just kept me
25 informed, depending on the circumstances.

1 A. No, it would not.

2 MS. TOMKOWIAK: All right. Let's
3 go ahead and go off the record.

4 MR. FORGE: That's fine.

5 Can I -- Misty, can I ask, is there
6 realtime today?

7 VIDEO OPERATOR: It is 11:46 a.m.
8 and we are now off the record.

9 (Thereupon, a brief recess was
10 taken.)

11 VIDEO OPERATOR: Okay. The time is
12 12:06 p.m. and we are now on the record.

13 BY MS. TOMKOWIAK:

14 Q. Ms. Mellendick, can you turn back to
15 your report?

16 A. Um-hmm (affirmative).

17 Q. Okay. And if you look at page 3,
18 paragraph one at the very top of that page.

19 A. Okay.

20 Q. Is that a fair summary of what you
21 were asked to opine on in this case?

22 A. It is.

23 Q. Is it fair to say that you are not
24 offering any opinions on CCA's performance of its
25 contracts with the U.S. Marshals?

1 A. Correct.

2 Q. Is it fair to say that you're not
3 offering any opinions on CCA's performance of its
4 contracts with ICE?

5 A. Correct.

6 Q. Fair to say that you're not offering
7 any opinions on CCA's performance of its
8 contracts with any other business partner besides
9 the BOP?

10 A. My opinions are only based on the
11 contracts that are listed in this report: Adams,
12 Cibola, Eden, McRae and Northeast Ohio during the
13 relevant time frame.

14 Q. Did you make any effort to compare
15 the quality of the services provided by CoreCivic
16 relative to the quality of services provided by
17 the BOP?

18 A. I did not.

19 Q. You don't intend to offer any opinion
20 on that at trial, correct?

21 A. I believe I stated in my report that
22 it is not an apples-to-apples comparison.
23 They're very different.

24 Q. To that end, you did not conduct any
25 analysis of the number or nature of deficiencies

1 documented at any BOP-operated facility during
2 the relevant time period?

3 A. I did not, because it would not have
4 been a true comparison.

5 (Remote transmission interference)

6 MS. REPORTER: Sorry? I'm sorry.

7 THE WITNESS: I didn't hear it
8 either.

9 BY MS. TOMKOWIAK:

10 Q. That's not something you looked at,
11 right?

12 A. What -- what was -- I'm sorry. You
13 cut out and I didn't hear you, so --

14 Q. I said but -- but just to be clear,
15 that's not something that you looked at?

16 A. I'm not sure -- what was it --

17 Q. I think you answered it before and
18 I -- I just wanted to be clear.

19 You said you did not conduct any
20 analysis of the number or nature of deficiencies
21 documented at any BOP-operated facility during
22 the relevant time period, right?

23 A. Correct.

24 MR. FORGE: Hold on.

25

1 the opinions you intend to offer in this case?

2 A. It is.

3 Q. What -- what do you mean by the
4 majority?

5 A. I meant that three of the five CCA
6 facilities were not performing.

7 Q. Okay. And is it your opinion that
8 those three facilities -- and are you referring
9 to Adams, Cibola and Eden?

10 A. I am.

11 Q. Is it your opinion that their
12 performance was largely deficient for the entire
13 relevant time frame of the case?

14 A. For the entire period, not all three
15 of them, no.

16 Q. Okay.

17 A. But --

18 (Crosstalk)

19 Q. And --

20 A. -- a large portion of the relevant
21 time frame.

22 Q. And just -- just help me understand
23 that.

24 So for which -- which one of those
25 facilities would you say their performance was

1 not largely deficient for the entire relevant
2 time frame?

3 MR. FORGE: Object as to --

4 THE WITNESS: I would --

5 MR. FORGE: -- form.

6 THE WITNESS: I would say Eden.

7 Eden started to show a decline a little
8 bit later on into the relevant time
9 period.

10 BY MS. TOMKOWIAK:

11 Q. Okay. And -- and we can -- we can
12 look at your report.

13 On -- on page 18 I think you actually
14 say that Eden had achieved above satisfactory
15 performance levels for 2012 through early 2014.
16 That's on page 18.

17 Do you agree with that?

18 A. Yes.

19 Q. And so with respect to the other two
20 facilities, McRae and Northeast Ohio, you found
21 CCA's performance to be well above satisfactory;
22 is that right?

23 A. That is correct.

24 Q. And, in fact, the -- the BOP still
25 has a contract with CCA with respect to the McRae

1 facility today; is that right?

2 A. Yes.

3 Q. Going back to your opinion, what does
4 largely deficient mean?

5 A. Among those three facilities, they
6 had numerous and serious and repetitive
7 deficiencies.

8 Q. And when you say numerous, is there a
9 specific quantitative benchmark that you're
10 referring to?

11 A. Just looking at their specific
12 reports in any given area, depending on which
13 report it was, you know, across that time frame.
14 But, no, I didn't have a minimal number in mind,
15 if that's what you're asking.

16 Q. Yeah. So there's no threshold number
17 of deficiencies that you would say is required
18 before a performance becomes largely deficient?

19 A. Can you ask that one more time?

20 Q. Sure.

21 There's no threshold number of
22 deficiencies, in your opinion, required before a
23 contractor's performance becomes largely
24 deficient?

25 A. No --

1 deaths. So we were seeing that deficiency

2 repeated amongst their facilities. So --

3 Q. Okay. And you say on page 23 that

4 The CAR XV awards in late 2014 concretely

5 determined that -- or I'm sorry -- concretely

6 determined the BOP would not grant CCA a new

7 contract based on their poor past performance.

8 So the CAR XV poor selection decision

9 was signed by the BOP on December 29, 2014.

10 Is -- is that the -- the date by which the -- it

11 was concretely determined that the BOP would not

12 award CCA a new contract?

13 A. Yes, in my opinion.

14 Q. Okay. So when you say late 2014 by

15 referring to the CAR XV awards, you mean by

16 December 29, 2014; is that right?

17 A. I don't disagree with that statement.

18 Yeah, that's fine.

19 Q. Okay. What do you mean by concretely

20 determined?

21 A. Well, it was spelled out in the

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
4 That award -- I mean, it was -- CCA
5 lost a very well-running facility, their
6 Northeast Ohio facility. They actually bid that

■ [REDACTED]
■ [REDACTED]
9 another provider. So in my mind, that spoke
10 volumes.

11 Q. And you weren't involved in that
12 decision, correct?

13 A. I was not.

14 Q. And so -- and your opinion is based
15 on your review of the source selection document?

16 A. Based on the -- my review of the
17 source selection document and just my experience
18 in general in the position I was in.

19 Q. And so by concretely determined,
20 are -- you're saying that the BOP did not grant
21 CCA the CAR XV award on that date; is that right?

22 A. Correct.

23 Q. So I just want to be clear. You're
24 not speaking as you were in April 2013 about
25 hypothetical contracts that CCA may or may not

1 get in the future, you were just referring to the
2 CAR XV award; is that right?

3 MR. FORGE: Object --

4 THE WITNESS: I was --

5 MR. FORGE: -- as to form.

6 THE WITNESS: I was referring to
7 the CAR XV award.

8 BY MS. TOMKOWIAK:

9 Q. As of December 29, 2014, do you have
10 any opinion regarding how likely or not it would
11 have been for the BOP to award a different new
12 contract to CCA?

13 MR. FORGE: Object as to form.

14 THE WITNESS: Yeah, I'm not -- I'm
15 not sure I understood that question.
16 Could you repeat it?

17 BY MS. TOMKOWIAK:

18 Q. Sure.

19 Do you have an opinion as to any
20 point after December 29, 2014 as to how likely or
21 not the BOP was to award CCA a new contract?

22 MR. FORGE: Object as to form.

23 THE WITNESS: I would think it
24 would depend on what period of time, but
25 what I think does speak volumes is the

1 fact that the bureau has awarded since
2 that time another 15 -- more than 15,000
3 bids and CCA has not won a competitively
4 bid contract with the Bureau of Prisons
5 in nine years. I believe 2011 was the
6 last time they won one.

7 BY MS. TOMKOWIAK:

8 Q. Are you speaking just with respect to
9 low security correctional facilities or are --
10 you're -- you're speaking about all type of
11 facilities?

12 A. I'm speaking in regards to these CAR
13 facilities.

14 Q. Okay. Well, what I'm -- I guess what
15 I'm trying to understand is let's look at the
16 relevant time period.

17 From December 29, 2014 to August
18 2016, do you have any opinion during that time
19 frame how likely or not it was for the BOP to
20 award CCA with a new contract?

21 MR. FORGE: Object as to form.

22 THE WITNESS: I believe it would
23 have been unlikely for the BOP to award to
24 CCA during that time frame.
25

1 BY MS. TOMKOWIAK:

2 Q. So in your opinion, at -- at no point
3 after the CAR XV awards was it possible for CCA
4 to turn their performance around?

5 MR. FORGE: Object as to form.

6 THE WITNESS: No, I'm not saying
7 that.

8 BY MS. TOMKOWIAK:

9 Q. Okay. Well, in your opinion, could
10 CCA have turned things around at some point after
11 the CAR XV awards?

12 MR. FORGE: Object as to form.

13 THE WITNESS: We hoped that CCA
14 would have turned things around at any
15 time.

16 BY MS. TOMKOWIAK:

17 Q. You mention in your report the -- the
18 cure notice that was issued to the -- to Cibola
19 in 2015.

20 Do you recall that?

21 A. I do.

22 Q. And you're aware that CCA
23 successfully responded to that cure notice and
24 that it was lifted a -- a few months later?

25 Is that a fair summary?

1 MR. FORGE: Object as to form.

2 THE WITNESS: I recall that it was
3 lifted because they corrected the majority
4 of the issues that were outlined in the
5 cure notice.

6 BY MS. TOMKOWIAK:

7 Q. And at that point in time, was it --
8 was the BOP more or less likely to award CCA a
9 new contract?

10 MR. FORGE: Object as to form.

11 THE WITNESS: I would have to
12 reanalyze all of the performance
13 information amongst their facilities to
14 provide an opinion on that.

15 BY MS. TOMKOWIAK:

16 Q. Well, if that's the case, if I asked
17 you how likely it was for the BOP to -- for the
18 BOP to award CCA a new contract at any point
19 during the period of December 2014 to August
20 2016, is it your testimony that you would have to
21 look at the performance documentation at that
22 particular point in time in order to be able to
23 render an opinion on that?

24 MR. FORGE: Object as to form.

25 THE WITNESS: I would have to

1 rereview my notes to offer an opinion on
2 that.

3 BY MS. TOMKOWIAK:

4 Q. Okay. So your opinion might change
5 based on the specific date and time that you were
6 asked to opine on?

7 MR. FORGE: Object --

8 THE WITNESS: It --

9 MR. FORGE: -- as to form.

10 THE WITNESS: -- it -- it may. But
11 what stands out in my mind is that there
12 were subsequent competitively bid
13 contracts and CCA did not receive any of
14 them.

15 BY MS. TOMKOWIAK:

16 Q. To your knowledge, did anybody at the
17 BOP tell CCA after December 2014 that it was
18 unlikely that they would win any new contract
19 with the BOP?

20 A. Not to my knowledge.

21 Q. You mentioned that you -- this
22 opinion is based on the source selection
23 decision -- or I should say at least in part on
24 the source selection decision; is that right?

25 A. Can you refresh my -- refresh me on

1 which opinion you -- you're referencing or
2 what --

3 Q. Your second -- your second opinion
4 relating to the CAR XV award.

5 A. It is based on the source selection
6 decision. It is based on my review of all of the
7 documents for this relevant time period. It's
8 based on my recollection of their performance in
9 my capacity as PMB administrator.

10 Q. And -- and you're aware, based on
11 your review of all those materials and your
12 experience, that past performance was not the
13 only non-price consideration in CAR XV?

25 Q. Did you consider that in forming your

1 opinion?

2 A. I relied on -- mainly for that
3 opinion was the main reason that the source
4 selection official said that CCA did not receive

■

■

7 that is where the weight was, in my opinion.

8 Q. In your opinion, was the ranking of
9 CCA's past performance as poor consistent with
10 the ratings that it had received in the CPARS
11 during the time period being evaluated?

12 A. I don't know that you can compare the
13 two.

14 Q. Well -- and we can -- we can look at
15 it if you'd like, but just in the interest of
16 time, I mean, the source selection document
17 itself goes through all of the ratings in the --
18 the CPARS. You saw the categories in the CPARS.
19 So I'm just interested if you know -- sitting
20 here today if you recall -- you said you reviewed
21 the CPARS, correct?

22 A. Um-hmm (affirmative). That's
23 correct.

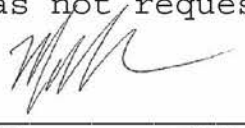
24 Q. And you -- okay. And you've reviewed
25 the source selection document?

1 CERTIFICATE OF NOTARY

2 I, MISTY KLAPPER, the officer before
3 whom the foregoing deposition was taken, do
4 hereby certify that the witness whose
5 testimony appears in the foregoing
6 deposition was duly sworn by me; that the
7 testimony of said witness was taken by me in
8 shorthand and thereafter reduced to
9 typewriting by me; that said deposition is a
10 true record of the testimony given by said
11 witness; that I am neither counsel for,
12 related to, nor employed by any of the
13 parties to the action in which this
14 deposition was taken; and, further, that I
15 am not a relative or employee of any
16 attorney or counsel employed by the parties
17 hereto, nor financially or otherwise
18 interested in the outcome of this action.

19 Further, that if the foregoing pertains to
20 the original transcript of a deposition in a federal
21 case, before completion of the proceedings, review
22 of the transcript [X] was [] was not requested.

23 Dated: November 3, 2020

24 
Misty Klapper, RMR, CRR
25 and Notary Public